

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

October 24, 2000

GSBCA 15325-TRAV

In the Matter of RAY L. SIEMONS

Ray L. Siemons, San Antonio, TX, Claimant.

Charles N. Stockwell, Travel Branch, Directorate of Travel and Vendor Pay, Defense Finance and Accounting Service, Denver, CO, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Ray L. Siemons, is a civilian employee of the Air Force, and also a member of the Air Force Reserves. His permanent duty station (PDS) is at the Air Logistics Center at Kelly Air Force Base, but he performed temporary duty (TDY) at the NCO [non-commissioned officer] Academy at Lackland Air Force Base for 40 days in a civilian status. Both bases are located in the San Antonio, Texas corporate limits. The Air Force provided on-base housing and issued travel orders that authorized a per diem allowance for meals. Subsequently, the agency denied his claim for reimbursement of the cost of meals. Mr. Siemons has requested the Board's review of the agency's decision to disallow this claim.

Background

Mr. Siemons' TDY assignment, which started on August 2, 1998, was for training purposes. In connection with this TDY, he stayed on the base, but took meals off base, believing that he was not authorized to eat in the military dining facility. Claimant's orders, dated July 28, 1998, instructed claimant to stay on base if billeting was available and stated that Government meals were not available or directed. The orders authorized a per diem allowance for meals and miscellaneous expenses. After claimant submitted a voucher for payment of the cost of meals, the Air Force questioned the validity of the orders, given the proximity of the training to claimant's permanent duty station. On August 19, 1998, the orders were amended to state that "Government meals are available and directed." Mr. Siemons did not receive a copy of the amended orders until after he completed training in mid-September, however.

Mr. Siemons states that, in addition to his orders, he was given a handbook stating that it was mandatory to reside at the base during training. He did not understand that he

could eat in the military dining room, and was not advised that this was the case until after he completed his training in September. He further explains that he could not, as a practical matter, have commuted home for meals and still been on time for training sessions.

The Air Force maintains that the travel orders were issued in error by claimant's command, in reliance on an outdated student handbook applicable to this training requirement. Prior to Mr. Siemons' TDY, the Air Force had determined it was not necessary to require civilian students to stay at the base while attending the Academy. The Air Force concedes, however, that claimant's unit was not timely informed of changes in its policy under which the requirement for live-in training for local employees had been dropped. Although the local Office of the Staff Judge Advocate advanced a legal opinion to the effect that the original orders were valid and the expenses payable, the Financial Services Officer at Kelly Air Force Base continued to question the claim and declined to pay Mr. Siemons' expenses.

Discussion

By statute, per diem allowances are authorized for government employees "when traveling on official business away from the employee's designated post of duty or away from the employee's home." 5 U.S.C. § 5702 (1994). The Federal Travel Regulation (FTR), which implements this statute, provides that per diem allowances may be paid when an employee performs official travel away from the official station. 41 CFR 301-11.1 (1998). The term "official station" is defined to be "the location of the employee's permanent work assignment" which is defined and is further defined to be within "the corporate limits of the city or town where stationed." 41 CFR 300-3.1. In general, lodging and meal expenses may not be reimbursed when an employee incurs such expenses at the official duty station, despite adverse weather or unusual work conditions. Ollice C. Holden, GSBCA 15175-TRAV, 00-1 BCA ¶ 30,815; Murray Lumpkin, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042; Herman T. Whitworth, GSBCA 14401-TRAV, 98-2 BCA ¶ 29,804. An exception to this rule has been recognized when such expenses are incurred by employees who are attending training sessions being held near the official station. See, e.g., Joyce Liverca, B-255585 (Apr. 20, 1994).

The Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, recognize this exception. Paragraph C4552C of the JTR provides that "[a] per diem allowance shall not be allowed within the limits of the PDS . . . at, or within the vicinity of, the place of abode (residence) from which the employee commutes daily to the official station except as provided in subparagraph F." Subparagraph F provides:

When a training session to which an employee is assigned is held at the employee's PDS and it's necessary for the employee to incur additional subsistence expenses, an appropriate per diem allowance may be authorized/approved by the order issuing or authenticating official (39 Comp. Gen. 119 (1959)). Such situations occur when a training session is held in a hotel located at the employee's PDS and the employee must obtain meals and/or lodging at the hotel because of training sessions

being held at night as well as day or because of a "live-in" requirement.

JTR C4552-F.

In essence, the local command disputes whether it was necessary for Mr. Siemons to stay at the base and pay for meals rather than commute home. In spite of this, the travel orders, although now deemed erroneous, were valid when issued. The Air Force had the discretion, under the JTR, to impose a "live-in" requirement and did so in this case. It was not free, after the training had commenced and expenses been incurred, to amend the orders retroactively to revoke the per diem allowance. See Gregg Snyder, B-252936 (Aug. 4, 1993). Mr. Siemons' claim should be paid.

CATHERINE B. HYATT
Board Judge